Filed: 10/12/2023

#### NOT YET SCHEDULED FOR ORAL ARGUMENT

## IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSTAINABLE ADVANCED BIOFUEL REFINERS COALITION,	)	
Petitioner,	)	Case No. 23-1246
V.	)	(Consolidated with No. 23-1177, et al.)
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	) _) )	

#### NONBINDING STATEMENT OF ISSUES

Pursuant to the Court's order of September 12, 2023 [Doc. # 2016460], Petitioner Sustainable Advanced Biofuel Refiners Coalition hereby submits the following nonbinding statement of issues in the above-captioned case, which has been consolidated with Case No. 23-1177, et al.

Whether EPA's implementation of the biomass-based diesel and 1) advanced biofuel programs for compliance years 2023 to 2025 under 42 U.S.C. § 7545(o)(2)(B)(ii) (hereinafter referred to as "Set") was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

- 2) Whether EPA's final conversion factor of 1.6 for determining the renewable volume obligations for biomass-based diesel was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- 3) Whether EPA's failure to revise the equivalence values for renewable diesel and its co-products was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- 4) Whether EPA's final conversion factor for determining the renewable volume obligations for biomass-based diesel was not a logical outgrowth of the proposed rule and thereby violated the notice and comment requirements of the Clean Air Act.
- 5) Whether EPA's definition of "biomass-based diesel" for purposes of Set was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- 6) Whether EPA's inclusion of jet fuel (also referred to as sustainable aviation fuel) in the biomass-based diesel category for purposes of Set was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- 7) Whether EPA properly declined to consider comments related to the implementation of the biomass-based diesel program.

This is a preliminary listing of issues that Petitioner Sustainable Advanced Biofuel Refiners Coalition may raise. Petitioner reserves the right to modify this statement of issues, as well as to raise these and other issues.

Respectfully submitted,

/s/ Sandra P. Franco

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Counsel for Sustainable Advanced Biofuel Refiners Coalition

Dated: October 12, 2023

Filed: 10/12/2023

# IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSTAINABLE ADVANCED BIOFUEL REFINERS COALITION,	) ) )
Petitioner, v.	) Case No. 23-1246 ) (Consolidated with No. 23-1177,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	) et al.) )
Respondent.	, ) )

### **CERTIFICATE OF SERVICE**

I certify that on this 12th day of October 2023, I caused a copy of the Sustainable Advanced Biofuel Refiners Coalition's Nonbinding Statement of Issues to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system, which will provide service upon all registered counsel.

/s/ Sandra P. Franco
Sandra P. Franco